BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

DEBORAH K. SUBLETT Claimant VS. **INTRACORP** Respondent AND **CIGNA WORKERS COMPENSATION** Insurance Carrier	)	Docket No. 186,917

ORDER

ON the 4th day of August, 1994, the application of the claimant for review by the Workers Compensation Appeals Board of a Preliminary Hearing Order entered by Administrative Law Judge John D. Clark, dated June 1, 1994, came on for oral argument.

APPEARANCES

The claimant appeared by and through her attorney Paul D. Hogan of Wichita, Kansas. The respondent and its insurance carrier appeared by and through their attorney Douglas C. Hobbs of Wichita, Kansas. There were no other appearances.

RECORD

The record consists of the documents filed of record with the Division of Workers Compensation in this docketed matter, including the transcript of the Preliminary Hearing of May 31, 1994, and the transcript of the deposition of claimant taken on April 21, 1994.

ISSUES

The Administrative Law Judge denied claimant's request for benefits and found for preliminary hearing purposes that claimant's injuries to her right ankle were not a natural consequence of the injuries to the left ankle. The Order of the Administrative Law Judge is silent pertaining to the issue of whether the injury to the right ankle is compensable as it occurred while claimant was on her way to an authorized medical appointment for treatment of the left ankle. The claimant requests the Appeals Board to review the denial of benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for purposes of preliminary hearing, the Appeals Board finds, as follows:

Claimant injured her right ankle on October 27, 1993, when she stepped down from a sidewalk and her right ankle went out from under her. At the time of the incident, claimant was going to a medical appointment for treatment to the other ankle which had been previously injured in a work-related accident that has been found compensable by the respondent and insurance carrier. As the injury to the right ankle occurred while claimant was on her way for treatment for another work-related injury, claimant's accidental injury is deemed to have occurred arising out of and in the course of her employment with the respondent.

The Kansas Supreme Court in Taylor v. Centex Construction Co., 191 Kan. 130, 379 P.2d 217 (1963), at pages 135 and 136 of the opinion, states:

> "Under our workmen's compensation act (G.S. 1961 Supp., 44-510) one of the primary duties of an employer to an injured workman is to furnish him such medical, surgical and hospital treatment as may be reasonably necessary to cure and relieve the workman from the effects of the injury and restore his health, usefulness and earning capacity as soon as possible. The liability of an employer to an employee arises out of a contract between them and the terms of the act are embodied in the contract. (Fougnie v. Wilbert & Schreeb Coal Co., 130 Kan. 410, 286 Pac. 396; Leslie v. Reynolds, 179 Kan. 422, 295 P.2d 1076). Section 44-518 provides that an employee must submit to medical treatment, or lose his benefits during the period that he refuses to submit to non-dangerous medical treatment.
>
> The evidence is clear that the claimant suffered accidental injury to his eye on August 16, 1960, in the course of his employment. The respondent was obligated to furnish medical treatment, and that could only be procured at the doctor's office in Topeka. The directions of Mankin were sufficiently comprehensive to embrace all the treatment necessary to heal the eye. *It would be folly to say that the claimant's trip going to and from the doctor's office did not 'arise out of' the nature, conditions, obligations, or incidents of his employment.* (Pinkston v. Rice Motor Co., 180 Kan. 295, 303 P.2d 197.)" (Emphasis ours.)

Therefore, the Order denying claimant medical treatment and other benefits pertaining to the right ankle injury should be reversed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that, for preliminary hearing purposes, the Preliminary Hearing Order of Administrative Law Judge John D. Clark, dated June 1, 1994, should be, and hereby is, reversed; that claimant is entitled to benefits under the Kansas Workers Compensation Act for the injury to her right ankle.

IT IS SO ORDERED.

Dated this ____ day of October, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

DISSENT

I respectfully dissent with the opinion of the majority in the above matter. The majority cites Taylor v. Centex Construction Co., 191 Kan. 130, 379 P.2d 217 (1963) as the controlling case in this fact scenario. Taylor can be distinguished on several grounds. In Taylor, the claimant was at work, received special permission to leave his employment in order to proceed to the doctor, was going to the doctor during work hours and at the time of the accident was being paid by the respondent. The Supreme Court made special note of the fact that the claimant was being paid during the trip and both the trip and the treatment were authorized by the respondent. There is no indication in this case that the respondent was aware that claimant was proceeding to a doctor's appointment at the time and on the date in question, and it is clear claimant was not being paid at the time of the injury to her right ankle.

The Supreme Court in Taylor also cites Larson, Volume I, page 186, which requires a finding either that the trip was in the course of employment by the usual test, or the nature of the primary injury contributed to the subsequent injury in some way.

There is no evidence from the claimant that the original injury to her left ankle caused this subsequent right ankle twist. In fact, the claimant's own testimony indicates there was no involvement between the new injury and the original injury.

This leaves only the possibility that the injury occurred during a trip that was in the course of the claimant's employment.

> "The words 'arising out of and in the course of employment' as used in this act shall not be construed to include injuries to the employee occurring while he is on his way *to assume the duties of his employment* or after leaving such duties, the proximate cause of which injury is not the employer's negligence." Taylor at 137.

The term "arising out of employment" points to the cause or origin of the accident and requires proof of some causal connection between the accidental injury and the employment. An injury arises "out of" employment if it arises out of the nature, conditions, obligations and incidents of the employment. Martin v. U.S.D. No. 233, 5 Kan. App. 2d 298, 615 P.2d 168 (1980); Hensley v. Carl Graham Glass, 226 Kan. 256, 597 P.2d 641 (1979).

The claimant, in leaving her house and stepping off of a curb in her own driveway, showed absolutely no connection between her employment and the injury in question. As such, I would affirm the Administrative Law Judge and deny benefits to the claimant for the injury to her right ankle which was neither a natural and probable consequence of the injury to the left ankle nor a new injury which arose out of and in the course of her employment.

BOARD MEMBER

I join in the above dissent.

BOARD MEMBER

c: Paul D. Hogan, 1333 N. Broadway, Suite C, Wichita, KS 67214
Douglas C. Hobbs, 600 Epic Ctr., 301 N. Main, Wichita, KS 67202
John D. Clark, Administrative Law Judge
George Gomez, Director